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Sixty-ninth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1858th MEETING

Held at the Palais Wilson, Geneva,
on Friday, 21 July 2000, at 3 p.m.

Chairperson: Ms. MEDINA QUIROGA

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third and fourth periodic reports of Australia (continued)

* The summary record of the second part (closed) of the meeting appears as document CCPR/C/SR.1858/Add.1

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GE.00-43469 (E)

The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Third and fourth periodic reports of Australia (continued) (CCPR/C/AUS/98/3 and 4; CCPR/C/69/L/AUS)

1. At the invitation of the Chairperson, the members of the delegation of Australia resumed their places at the Committee table.

2. Mr. CAMPBELL (Australia), continuing his delegation's replies to questions asked at the previous meeting, said that corporal punishment was still on the statute books of the territory of Norfolk Island, although he did not believe that sentences of corporal punishment were ever handed down.

3. Members had asked how Australia applied the provisions of article 9, paragraph 4, of the Covenant in respect of asylum-seekers. In his Government's interpretation of article 9, the "lawfulness" of a person's detention was its lawfulness under domestic law, rather than international law.

4. Members had asked what measures had been taken to prevent the political leader Pauline Hanson from making "politically intolerant" speeches. In fact, the influence of Ms. Hanson's party had declined, and she had lost her seat in Parliament. In any case, she was subject to the same laws on expression of opinion as any other citizen. Another member of her party had been reported to the Human Rights Equal Opportunity Commission for "racial vilification", and the Commission had upheld the complaint.

5. Members had asked about the implementation of the provisions relating to equal suffrage in article 25 of the Covenant. In the case of McGinty v. Western Australia (CCPR/C/AUS/98/4, para. 115), the High Court of Australia had decided that all electorates need not necessarily have the same number of electors in order to be representative. As Australia interpreted article 25, electorates of varying sizes as well as different electoral systems were acceptable: for example, the representatives in the upper houses of many bicameral parliamentary systems represented very different numbers of electors. In Australia, electorates must be of a size which a member could realistically serve, given the vast distances involved.

6. Members had asked about euthanasia in Australia (CCPR/C/AUS/98/4, paras. 30-32). Euthanasia, which had been legalized in the Northern Territory, had now been prohibited by a federal law. No statistics were available to indicate how many cases of euthanasia took place in practice.

7. Ms. BICKET (Australia), answering questions about the apparent distinctions between various categories of asylum-seekers, said that the only distinction made between applicants for protection visas - i.e. applicants for refugee status - was that people being held in detention were given priority. When refugee status had been granted, there were some differences between the treatment of "unauthorized arrivals" and other unlawful non-citizens. She would provide the

Committee with written information about those distinctions but, in the view of her Government, they were determined by legitimate and objective criteria and were thus not discriminatory. They were designed to ensure that non-citizens could not enter the community until their claims had been assessed, to preserve the integrity of the migration programme, and to ensure that people could be found if their claims failed and they had to be deported.

8. If a person who had entered the country illegally was detained, he was promptly informed of the reasons for that detention. Interpreters could not be provided for every language at all hours of the day, but they were made available as soon as possible. In Australia's interpretation of article 9, the Government was required to inform persons of the reasons for their detention and of any charges to be brought against them: it was not required to inform them of any legal procedures available to them.

9. Members had asked a specific question about paragraph 601 of the third periodic report (CCPR/C/AUS/98/3), relating to article 26 and the right to compensation for unlawful imprisonment. The Government would give a full reply in writing later.

10. There had also been a question about the number of times ministers had intervened in order to meet Australia's obligations in respect of non-refoulement of refugees. In general, such cases would also be covered by Australia's obligations under the Convention relating to the Status of Refugees. She would provide the Committee with detailed statistics later.

11. Ms. LEON (Australia) said that members had asked about a court case relating to genocide (Covenant art. 6 on the right to life). In the case in question, the court had stated that the fact that genocide was a crime in international law did not automatically make it a crime under Australian common law. In some cases, Australia enacted a special law to give effect to its obligations under international treaties, and in others it considered that existing legal provisions were sufficient. Successive Australian Governments had considered that acts amounting to genocide would constitute offences under existing laws, for example the laws on murder or assault. It was therefore not true to say that genocide was not prohibited under Australian law.

12. Members had asked about the tax position of the Church of Scientology. That Church had been recognized as a religion in an important court case which had clarified the definition of a "religion" for fiscal purposes, and it was thus entitled to the same tax concessions as other religions.

13. Turning to the question about privatization of prisons, she said that a number of privately run prisons had been opened in some Australian states. They were under the legal and contractual control of the state concerned: prison managers made decisions about the day-to-day running of the prison, but overall their decisions must be consistent with their contractual obligations.

14. Members had asked whether Australia considered that the existing restrictions on contacts between people detained as illegal immigrants and external organizations were consistent with articles 17 and 19 of the Covenant. Article 17 prohibited, inter alia, "arbitrary" interference with private correspondence. In her Government's view, however, the existing

restrictions were justifiable because refugees' claims for asylum needed to reflect their true situation, instead of being influenced by outside bodies. The measures were justified by the Government's sovereign right to control its borders, ensure the integrity of its migration programme and maintain order in detention centres. The Government likewise considered that its restrictions on certain contacts with people in detention were consistent with article 19, since they constituted justifiable restrictions which were allowed under that article.

15. Members had also asked about the rights of aliens in Australia. Aliens had the same rights as everyone else under the jurisdiction of Australia, with the exception of certain rights, such as the right to vote, which were restricted to citizens.

16. Members had further asked whether Australia had considered the introduction of quotas as a means of improving the status of women in society. The Government was committed to equality of opportunity for women: the Minister Assisting the Prime Minister for the Status of Women had Cabinet rank, and many government departments had specialist women's units, programmes or consultation processes. Government departments provided data disaggregated by gender in their annual reports. The legislation on equal opportunities for women required businesses, educational establishments, community organizations and trade unions above a certain size to implement an equal opportunities policy.

17. There were no employment quotas for women in Australia, since the Government considered that all appointments should be made on merit. However, the federal Sex Discrimination Act reserved the Government's right to introduce special measures consistent with Australia's obligations under the Convention on the Elimination of All Forms of Discrimination against Women.

18. Mr. LALLAH admitted that he was perplexed by some of the answers given by the delegation. The Covenant had not been specifically incorporated into Australian law, a fact justified by the Government on the grounds that Covenant rights were already covered by existing legislation. However, to consider just one example - the case of Boobera Lagoon, where the Aboriginal community had objected to the sport of water-skiing because it was a sacred site for them, the courts had simply had no opportunity of examining the case in relation to the provisions of the Covenant (e.g. art. 27 on the rights of minorities). If the Covenant had had legal authority, the Aboriginal population could have cited article 27 in court and, if the court had found in their favour, they would have been entitled to a remedy. He was not commenting on the merits of the case; it might well be that the water-skiing business was justifiable under property rights which were protected by the Constitution, for example. The point was that the courts had had no opportunity to pronounce on the relative importance of the various rights involved, and the parties had had no opportunity to seek a remedy.

19. Mr. van BEURDEN (Australia) said that, in many cases, the rights enshrined in the Covenant were deemed to be enjoyed by everyone anyway. Legislation was enacted only in relation to additional or special rights: for example, where article 27 was concerned, special laws might be passed to give indigenous people the right to hunt, fish or gather plants in areas where non-indigenous people were not allowed to do so. Following changes to the Constitution, the responsibility for Aboriginal affairs was now shared between the federal and state authorities.

20. Cases relating to the protection of national heritage always involved a balance between heritage considerations and other considerations, such as economic interests. Indigenous people had the right to put their case, but all the issues involved would be considered in reaching a decision. That was a difficult issue which all Governments had to face: the Australian system was certainly not perfect, but the Government considered it the best solution available so far.

21. Mr. CAMPBELL (Australia) pointed out that there were other appropriate remedies besides a court decision, as recognized in article 2 of the Covenant. Australia believed that its system for giving effect to the Covenant was appropriate for its situation and consistent with its obligations.

22. The CHAIRPERSON expressed the Committee's appreciation for the information provided by the extremely competent Australian delegation. In general, the human rights situation in Australia was commendable, and there had clearly been progress since the submission of the second report. However, a number of areas of concern still persisted, such as the practice of mandatory sentencing.

23. Another major concern was the position of the Covenant in the Australian legal order. Certainly, under article 2, States parties had considerable discretion in the way they gave effect to the rights enshrined in the Covenant. However, they did not have the discretion to avoid giving effect to them altogether. Not all the rights enshrined in the Covenant were protected by domestic legislation, and an effective remedy was thus not available in all cases. For example, Australia understood article 9, paragraph 4, as referring to the legality of the detention of an illegal immigrant only in terms of the domestic legal order: it was not clear, either from the reports or from the delegation's answers, what remedy was available in cases of arbitrary detention in the sense in which the term was used in the Covenant.

24. In many cases, the Australian delegation had answered the Committee's questions by stating that the matter in question was subject to state or territorial legislation and was not the responsibility of the Federal Government. However, the Federal Government should not allow any legislation to continue if it was contrary to the provisions of the Covenant, just as it would not, presumably, permit state or territorial legislation which was inconsistent with the Constitution. In the Teoh case which the delegation had mentioned, for example, there appeared to have been no question of invoking the Covenant.

25. In respect of complaints from individuals, the delegation had stated that, if Australia did not agree with the Committee's conclusions, it would not carry out its recommendations. That was surely not a good example for other States parties. The delegation had actually cited the complaints procedure as one of the remedies open to its citizens, but it was surely not a valid means of recourse if States parties felt free to ignore the Committee's conclusions.

26. Australia had recognized the right to equality of the Aboriginal people and the terrible wrongs they had suffered in the past, especially the children who had been separated from their families. The measures adopted to redress those wrongs were commendable, but they were not enough to make up for the wrongs of the past, the persistent inequality of the present and the prospect of continuing inequality in the future.

27. Mr. LUCK (Australia) thanked members for the exchange of views which had taken place, limited only by lack of time and the complexity of the issues involved. He hoped that his delegation had been able to make clear the extent of public and media interest in the areas of concern to the Committee and the democratic nature of Australian society. His delegation appreciated the frankness of members' comments and would give them full consideration.

The public part of the meeting rose at 3.45 p.m.